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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/772,100	01/26/2001	Prem S. Singh	42892/KMO/C945	7975

7590

06/25/2002

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EXAMINER

BHAT, NINA NMN

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 06/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/772,100

Applicant(s)

SINGH, PREM S.

Examiner

N. Bhat

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Singh USP 5,952,027 in combination with Westerberg USP 5,990,454.

Singh discloses the invention substantially as claimed.

Singh teaches a method of producing crisp surface and imparting a uniform gold brown color to a precooked whole muscle meat product by coating at least a portion of the surface of the precooked whole muscle meat product with a browning liquid pyrolysis product which is then subjected to an energy source that heats the coated surface at a temperature for a time sufficient to develop a gold brown color on the exposed surface without shrinking the precooked whole muscle meat product. [Note abstract] Specifically, Singh teaches coating the surface of the precooked meat or poultry product with one or more suitable browning liquid pyrolysis products such as

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ST-300 liquid smoke and SELECT 24 P liquid smoke as well as browning liquids obtained from the pyrolysis of sugars such as MAILLOSE caramel coloring. The browning agents can further include masking agent or flavoring enhancers, turkey flavor or turkey broth and honey can be added to the browning liquid to give a roasted aroma and enhance the flavor of the final product. [Note Column 4, lines 18-64]. Singh teaches after coating the meat product with the browning composition the meat product is browned and crispened using an energy source that selectively heats and dehydrate the surface of the meat product by heating the meat at temperatures ranging from 60°C to 260°C in an impinging air oven which causes hot air to be impinged on the top and bottom of the meat product. Singh further teaches that other energy sources for selectively heating the coated meat product include laser light sources, medium wavelength infrared or microwave radiating devices.

However, Singh does not teach heating to temperatures above 400°C which has been claimed in the instant application.

Westerberg et al. teach a light wave oven and method of cooking for cooking food with radiant energy in the visible, near visible and infrared spectrum using a plurality of high power lamps position above and below the food. Westerberg teach that with the lightwave oven provides for sequential operation of the lamps, which selectively varies energy intensity on certain food surfaces, which provides improved and superior uniformity of food browning compared to radiation alone. The lamps, which provide the infrared, near visible or visible electromagnetic energy, are quartz body tungsten halogen or high intents discharge lamps. [Note Column 8, lines 29-56] Westerberg et

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al. teach in the grill or broiler mode, for grilling meats and fish, the oven can sear the surface of the food that is in contact with the ridges of the oven leaving browned grill marks on the food. Westerberg et al. teach that operating the control or operation of the lamps i.e., to change the color temperature of the lamps thus increasing the percentage of infrared radiation emitted in any part of the cooking cycle has been contemplated which would result in different crispening and browning of the foods and specifically teaches that different crisp modes can be achieved by operating and activating three upper lamps with a total power of 1.9 KW, each lamp would run well below the 2900K color temperature that two full power lamps operate thus emitting less visible and near-visible light. Westerberg teach using the lamps to warm food, brown/crispen food, grill food, cook food. Westerberg specifically teach that the infrared, near visible and visible light radiation provide by the operation of the combination of lamps will provide surface browning of meat. [Note Column 17- lines 24-55 and Column 18, lines 1-38]

It would have been obvious from the combined teachings of Singh and Westerberg et al because Singh teaches a method of browning precooked whole muscle meat products comprising the steps of coating a browning liquid pyrolysis product onto at least a portion of the surface of the whole muscle meat product which is then exposed to an energy source at temperatures sufficient to selectively heat the coated surface of the whole muscle meat product and develop a golden brown to mahogany-brown color on the exposed surface which shrinking of the precooked, whole muscle meat product. Singh doesn't teach temperatures greater than 400°C, Singh does teach that the energy source for creating an environment for browning the

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precooked whole muscle meat product can include either impingement air ovens or radiant (microwave) or infrared energy sources. Westerberg teaches a method as well as lightwave oven, which can warm, crisp/brown, grill by controlling the operation of high power lamps positioned above and below the food. Westerberg et al. teach that using the lamps in the infrared region will cook meat products on the surface only to provide a crisp and browned outer surface to use the lightoven taught by Westerberg, the temperature would be well below 2900K which is greater than 400°C claimed in the instant invention. It is maintained that when reading the teachings of Singh with the teachings of Westerberg renders applicant's invention as a whole obvious to one having ordinary skill in the art at the time of the invention.

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-30 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No.

5,952,027. Although the conflicting claims are not identical, they are not patentably distinct from each other because a process for browning precooked, whole muscle meat

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products comprising coating a browning liquid pyrolysis product onto at least a portion of the surface of a precooked whole muscle meat product and then exposing the coated surface to an energy source and selectively heating the coated surface of that whole muscle meat product at a temperature and for a time sufficient to develop a golden-brown color on the exposed surface without substantial shrinking the precooked, whole muscle meat product has been claimed in the '027 patent, the instant invention specifically recites that the temperature is above 400°C, the claims in the '027 patents encompasses all the temperatures and time sufficient to develop a golden-brown color on the exposed surface to select a temperature range which would accomplish obtaining the color on the surface of the meat without substantial shrinkage would have been obvious to one having ordinary skill in the art at the time the invention was made.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kang et al. teach a process of cooking edible browned storage stable brown meats or muscle. A powdered browning composition is applied to the muscle as well as other flavorings and then the coated muscle is exposed to microwave energy. WO 98/53712 teach a process of producing a coated food having a fried appearance comprising the steps of coating the food, disposing a browning agent at the surface of the coated food and then dry heating the coated food to flash cook the food. The dry heating step takes place at temperatures from about 70-200°C for up to 120 seconds. The heating means can include convection, microwave, grilling or impingement oven cooking. Rao et al. teach a method for simulating open flame broiled meat products, wherein the grill is coated with a caramelizing agent which

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leaves grill marks on the meat product during the cooking process as the meat is cooked in a convection oven. Merabet teach an edible oil-in water microemulsion for imparting crisping and browning to a food product when the microemulsion is coated onto the food product and the coated food product is then subjected to microwave energy. Wang teach a method for coating a whole meat muscle produced with a powdered mixture by electrostatic deposition.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 703-308-3879. The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.



N. Bhat
Primary Examiner
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June 19, 2002